Consolidation Coal Company *and* United Mine Workers of America. Case 10–CA–25715

January 4, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

On August 7, 1992, Administrative Law Judge Philip P. McLeod issued the attached decision. The Respondent filed exceptions and a supporting brief. The Charging Party filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Consolidation Coal Company, Tackett Creek, Tennessee, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] In agreement with the judge, we find *Soule Glass & Glazing Co. v. NLRB*, 652 F.2d 1055 (1st Cir. 1981), relied on by the Respondent, distinguishable on its facts from the present case. In so doing, we emphasize that in *Soule*, unlike here, the employer both provided a partial response to the union's information request and explained its reasons for not complying with the balance of the request.

Susan Pease Langford, Esq., for the General Counsel.
Daniel L. Stickler, Esq. and *Albert F. Sebok, Esq. (Jackson & Kelly)*, of Charleston, West Virginia, for the Respondent.
Michael J. Healey, Esq. (Healey, Davidson & Hornack), of Pittsburgh, Pennsylvania, for the Union.

DECISION

STATEMENT OF THE CASE

PHILIP P. MCLEOD, Administrative Law Judge. I heard this case in Tazewell, Tennessee, on March 24, 1992. The charge which gave rise to this case was filed on October 10, 1991,[1] by United Mine Workers of America (the Union) against Consolidation Coal Company (Respondent) in Region 9 of the National Labor Relations Board (the Board) where it was docketed as Case 9–CA–28993. On December 2, Case 9–CA–28993 was transferred to Region 10 of the Board and assigned Case 10–CA–25696. It was later determined that the case number had been assigned in error, and on December 18, the case number was corrected to be Case 10–CA–25715, as referred to in the caption herein. On December 31, a complaint and notice of hearing issued which alleges, inter alia, that Respondent violated Section 8(a)(1) and (5) of the National Labor Relations Act (the Act) by failing to provide the Union with information necessary and relevant to its performance of duties as the exclusive collective-bargaining representative of certain of Respondent's employees.

In its answer to the complaint, Respondent admitting certain allegations including the filing and serving of the charge in Case 9–CA–28993;[2] its status as an employer within the meaning of the Act; the status of union as a labor organization within the meaning of the Act; the existence of a collective-bargaining relationship and a collective-bargaining agreement between the Union and Respondent; and the Union's request for certain information from Respondent. Respondent denied having failed and refused to give the Union the requested information and denied having engaged in any conduct which would constitute an unfair labor practice within the meaning of the Act.

At the trial herein, all parties were represented and afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. Following the close of the trial, all parties filed timely briefs with me which have been duly considered.

On the entire record in this case and from my observation of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

Consolidation Coal Company is, and has been at all times material, a Delaware corporation with an office and place of business at Tackett Creek, Tennessee, where it is engaged in the mining and sale of coal. In the course and conduct of its business operations, Respondent annually sells and ships from its Tennessee facility products valued in excess of $50,000 directly to customers located outside the State of Tennessee.

Respondent is, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. LABOR ORGANIZATION

United Mine Workers of America is, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

Respondent and the Union are signaties to the National Bituminous Coal Wage Agreement of 1988, which is effective by its terms until February 1, 1993. Pursuant to article II of

[1] All dates herein refer to 1991 unless otherwise indicated.

[2] Although Respondent admits timely service of the charge as filed in Case 9–CA–28993, it sets forth a ''defense'' in its answer that, ''The complaint must be dismissed for the reason that no charge was filed in the above proceeding.'' This ''defense'' is discussed in my analysis and conclusions below.

that collective-bargaining agreement, laid-off employees have certain preferential hiring rights at mines of their signatory employer even though those mines are not covered by the agreement.

The ''Matthews Mine'' is owned and was operated by Respondent until early 1991. Employees at that operation were covered by the collective-bargaining agreement between Respondent and the Union. Consolidation Coal Company of Kentucky is a wholly owned subsidiary of Respondent. It operates various mines in the State of Kentucky which are not covered by the collective-bargaining agreement, including mines at Sierra, Wiley, Jones Fork, and a preparation plant at Skyline.

By early 1991, all union miners were laid off at Respondent's Matthews Mine. The mine was closed. Equipment and certain employees, primarily supervisors, were moved from the Matthews Mine to facilities owned and operated by Consolidation Coal Company of Kentucky. Many of the miners laid off at Matthews Mine sought to claim job rights at mines owned and operated by Consolidation Coal Company of Kentucky. These employees received letters stating that they were not able to claim job rights at these mines because Consolidation Coal Company of Kentucky was not signatory to the 1988 collective-bargaining agreement.

On approximately January 23, the Union filed a class action grievance on behalf of employees from the Matthews Mine alleging that the ''employer has violated the labor agreement of 1988 by failing to honor article II on its coal lands in Eastern Kentucky, including, but not limited to Sierra/Consol of Kentucky.''

On February 26, a step-three grievance meeting was held between the parties concerning this class action grievance. The grievance was not resolved. It is undisputed that at this meeting, the Union's representative, Ken Johnson, said that the Union intended to pursue the matter, but that before doing so it needed certain information from Respondent. It is also undisputed that Johnson then orally presented a detailed and lengthy request for information. Respondent's representatives at that meeting, Daniel French and James Ingram, both testified that as Johnson spoke, they tried to write down what he said. When they were not able to keep up, they asked Johnson to slow down. According to French and Ingram, Johnson told Respondent, ''Don't worry about trying to get it all down,'' that the Union would be sending Respondent a formal request by mail. Johnson, who testified before Ingram and French, admitted stating that he was going to follow up this verbal request with a written request which would probably include additional information. According to Johnson, however, he told Ingram and French, ''I was telling them verbally of some information that they could be working on for me.'' I credit Ingram and French insofar as they assert Johnson informed them he would follow the oral request with a written request. I do not credit them, however, that Johnson told them not to worry about taking down the oral list. Johnson may have told Ingram and French ''not to worry'' about taking the list verbatim, but it is clear from the length and scope of the information requested that Johnson was not simply exercising his voice box. I credit Johnson he told Ingram and French he was giving them the oral request then so that they could be working on getting the information together.

I find that when Johnson told Ingram and French he would be following the oral request with a written request and when he may have told them ''not to worry'' about writing his oral request verbatim, Ingram and French chose not to worry about the oral request at all. They did not ask Johnson any questions about the information he was requesting, nor was Johnson asked to clarify anything which was asked for. Ingram and French chose simply to wait for the written request.

Earl Gambrell, one of the employees who had been laid off at Respondent's Matthew Mine, testified that in March and April 1991, he observed that both supervisors and equipment from the Matthews Mine were sent to the Jones Fork Mine owned and operated by Consolidation Coal Company of Kentucky. Although Respondent would not stipulate to these facts as testified to by Gambrell, it offered no evidence to contradict his testimony.

On May 6, the Union sent a written request for information, including interrogatories, to Respondent seeking information about the relationship between Consolidation Coal Company of Kentucky and Respondent. There is no question that this request for information is lengthy and detailed. It is lengthy, however, precisely because it is specific and detailed.

On May 17, Respondent wrote to the Union referring to the request as being ''lengthy and incredibly broad.'' Respondent told the Union, however, that it would respond to the request for information by May 31.

On May 30, Respondent wrote to the Union stating that ''several questions need to be addressed and clarification obtained.'' Respondent recommended that another step-three grievance meeting be held. When Johnson received this letter from Respondent, he telephoned the union counsel to discuss what response, if any, to take. Johnson and the Union's attorney concluded that, in view of similar requests and refusals to provide information elsewhere, including pending litigation elsewhere, Respondent's May 30 letter was simply foot dragging by Respondent.

The Union did not immediately file an unfair labor practice charge against Respondent. Instead, it continued to gather what information it could on its own about the relationship between Consolidation Coal Company of Kentucky and Respondent. During September and October 1991, the Union made trips to various facilities being operated by Consolidation Coal Company of Kentucky, including the Wiley Mine and the Skyline Preparation Plant. During these visits, the Union observed what it could about the operations, employees, and company logos being exhibited. The Union did not specifically request or gain access to the facilities. During one of these visits, however, Union President Mason Caudill repeatedly requested some of the items of information which had been included in the earlier written request. Respondent did not provide any of this information.

On October 9, the Union sent another letter to Respondent, again requesting the information which it believed it needed for processing the class action grievance. At about the same time, the Union filed its charge with the Board. On November 4, Respondent answered the Union's letter of October 9, again expressing a need to discuss the scope of the information request.

Analysis and Conclusions

In its answer to the complaint herein, Respondent admits service of the charge in Case 9–CA–28933. Nevertheless, the answer also claims, ''Consol denies that it was served with any charge in the above proceeding.'' Elsewhere in its answer, as a ''second defense'' Respondent also claims, ''The complaint must be dismissed for the reason that no charge was filed in the above proceeding.'' Respondent does not elaborate on this argument in its posttrial brief, and I find the argument altogether ludicrous. There is only one unfair labor practice charge involved in this case. It was filed in Region 9 of the Board and docketed as Case 9–CA–28993. Respondent admits proper service of that charge. Thereafter the charge was transferred from Region 9 to Region 10 and eventually docketed as Case 10–CA–25715. On December 31, 1991, complaint issued bearing the new case number, with reference therein to the earlier case number. Transfer of an unfair labor practice charge from one region to another region of the Board is a purely administrative matter, which neither requires Respondent's permission nor affects the service requirements of Section 10(b) of the Act. I find that Respondent was properly served with the underlying unfair labor practice charge in this matter.

It is well settled that employers are under an obligation to provid information that is needed by the bargaining representative in the performance of its duties. Further, information requested by the bargaining representative of an employer's employees related to wages, hours, and conditions of employment is considered presumptively relevant. Where the bargaining agent requests information not directly connected to the terms and conditions of employment of the employees it represents, the Union has the initial burden of establishing relevance of that information to the performance of its duties.[3] This initial burden of showing relevance has been required, and been found to have been met, in cases involving an employer's double-breasted operations and in cases where represented employees have contractual job rights at nonsignatory operations of the same employer. See *NLRB v. Lenoard B. Herbert Jr. & Co*., 696 F.2d 1120 (5th Cir. 1983); *Maben Energy Corp*., 295 NLRB 149 (1989).

In the instant case, the Union requested information relating to the mining operations of Consolidation Coal Company of Kentucky, a wholly owned subsidiary of Respondent. At the trial herein, Respondent's counsel admitted the relevance of the information requested by the Union, stating, ''We're willing to say that there is a reasonable basis for them to make that inquiry. . . . I think the only issue before the judge is whether we refused the request for information.'' The facts here clearly support Respondent's admission. The uncontroverted testimony about the transfer of supervisory personnel, the transfer of equipment, common executives, and identical logos at Respondent's facilities and those of Consolidation Coal of Kentucky is sufficient to form the required reasonable basis the Union needed for requesting the information in this case. I note too that various license applications for Consolidation Coal of Kentucky facilities appear at different times to refer interchangeably to Consolidation Coal Company and Consolidation Coal Company of Kentucky. Roger Gann, the manager of mines for Consolidation Coal Company of Kentucky, whose signature appears on those documents, was unable to explain any reason for these names being used interchangeably. The facts here clearly demonstrate, and I find, that the information requested by the Union of Respondent was relevant to the performance of its duties, and the Union is entitled to the requested information.

Nevertheless, Respondent denies that it has violated the Act, apparently focusing on the narrow contention that it never actually refused to provide the requested information. Respondent's position is best described in its posttrial brief, wherein Respondent states:

> The UMWA served a written request for information on May 6, 1991. Since receiving that request, Consol has never refused to produce any documents or information requested by the UMWA. In fact, Consol, in good faith, has requested that the UMWA meet with it to discuss and seek clarification to the overly-broad request served by the UMWA . . . . It is the UMWA, and not Consol, that has failed to bargain in good faith . . . by not meeting with Consol.

Respondent also quotes from and relies on *Soule Glass & Glazing Co. v. NLRB*, 652 F.2d 1055, 1098 (1st Cir. 1981). In particular, Respondent relies on the language in *Soule Glass* wherein the court stated:

> When the employer presents a legitimate good faith objection on grounds of burdensomeness or otherwise, and offers to cooperate with the union in reaching a mutually acceptable accommodation, it is incumbent on the union to attempt to reach some type of compromise with the employer as to the form, extent, or timing of disclosure.

It is equally important to note additional language of the *Soule Glass* decision wherein the court stated:

> To be sure, the union need not indulge the company in protracted negotiations over the terms, content, and form of disclosure. . . . Good faith is required of *both* sides. [Id.]

I agree with counsel for the General Counsel that Respondent's May 30 letter claiming that ''several questions need to be addressed and clarification obtained,'' in the circumstances present here, was nothing more than an effort by Respondent to generate confusion where none existed and to stall having to give the Union the information it requested. The information requested was clear, unambiguous, and specific in its content. At the trial herein, Respondent's attorney conceded that the information request in this case was very similar to the information request in other cases involving these same parties. *Consolidation Coal Co*., supra. In the more recent of those two cases, the administrative law judge specifically noted and commented on Respondent's ''subsequent piecemeal disclosure of dribs and drabs of information.'' 307 NLRB at 72. In view of the similarity between the Union's request for information here and earlier requests, and in view of Respondent's prior practice of piecemeal disclosure of information requested, the Union had every reason to believe that Respondent's May 30 letter was nothing more than another beginning of that same process by Respondent.

[3] For a complete discussion of applicable cases, see *Consolidation Coal Co*., 307 NLRB 69 (1992), and 305 NLRB 545 (1991).

I note that in neither its May 30 letter nor its November 4 letter has Respondent ever indicated which of the Union's specific requests for information required clarification. Even during the trial herein, Respondent made no effort to present any evidence of any ambiguity or lack of clarity in the Union's information request. Nor has Respondent made any attempt to provide even partial response to the information request or provide any of the requested documents. Respondent has simply chosen to stand behind its alleged need for unspecified clarification. I agree with the Union's posttrial brief wherein it states,

> One may be permitted to wonder, in light of the (other two Board cases involving Respondent), when it is that Consol intends on responding by providing information.

I find that by its actions, Respondent has failed and refused to provide the Union with information relevant and necessary to the performance of its duties as the exclusive collective-bargaining representative of certain of Respondent's employees; and Respondent has thereby violated Section 8(a)(1) and (5) of the Act.

CONCLUSIONS OF LAW

1. Respondent Consolidation Coal Company is, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. United Mine Workers of America is, and has been at all time material, a labor organization within the meaning of Section 2(5) of the Act.

3. Throughout all times relevant to this proceeding, United Mine Workers of America has been, and is, the exclusive collective-bargaining representative of certain employees employed by Consolidation Coal Company, and those employees have been covered by the terms and conditions of a collective-bargaining agreement between Respondent and the Union.

4. Respondent has failed and refused to provide the Union with information relevant and necessary to the performance of its duties as the exclusive collective-bargaining representative of certain of Respondent's employees; and Respondent has thereby violated Section 8(a)(1) and (5) of the Act.

5. The unfair labor practices which Respondent has been found to have engaged in, as described above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices in violation of Section 8(a)(1) and (5) of the Act, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Since the Matthews Mine is now closed, it would serve no purpose to order Respondent to post a notice to employees at that location. Accordingly, I shall require Respondent to mail a copy of the required notice to all employees who worked in the bargaining unit represented by the Union at the Matthews Mine during the last 6 months before it was closed.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[4]

ORDER

The Respondent, Consolidation Coal Company, Tackett Creek, Tennessee, it officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to provide the Union with information relevant and necessary to the performance of its duties as the exclusive collective-bargaining representative of Respondent's employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide the Union with information requested by it in its letter of May 6, 1991, to Respondent.

(b) Mail to all employees covered by the collective-bargaining agreement with United Mine Workers of America who worked at the Matthews Mine during the last 6 months before it was closed, copies of the attached notice marked ''Appendix.''[5] Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by Respondent's authorized representative, shall be mailed by Respondent to all such employees by regular mail.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent has taken to comply.

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[4] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and allobjections to them shall be deemed waived for all purposes.

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail and refuse to provide United Mine Workers of American information relevant and necessary to the performance of its duties as the exclusive collective-bargaining representative of our employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them in Section 7 of the National Labor Relations Act.

WE WILL provide the Union with the information it requested in its letter of May 6, 1991.

CONSOLIDATION COAL COMPANY